92-1159

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

VIVIAN FAULKNER-KING,

Petitioner,

vs.

EUGENE C. WICKS, DONALD PILCHER, JAMES KAUFMAN, JACK McKENZIE, EDWIN L. GOLDWASSER, THEODORE ZERNICH, ALVIN D. MOORE, JERROLD ZIFF, and THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF ILLINOIS,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois Fourth District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can the State of Illinois constitutionally prohibit its State courts of general jurisdiction from exercising subject matter jurisdiction over cases which seek redress for sexual discrimination in violation of the Fourteenth Amendment to the Constitution of the United States, and Title 42 U.S.C. Sections 1983, 1985(3), and 1986?

2. Can the State of Illinois constitutionally permit its citizens to bring claims of sexual discrimination in its State courts of general jurisdiction while refusing to allow claims for sexual discrimination to be brought in those same courts under the Fourteenth Amendment to the Constitution of the United States, and Title 42 U.S.C. Sections 1983, 1985(3) and 1986?

3. Can the State of Illinois constitutionally prohibit claims for sexual discrimination brought under the Fourteenth Amendment to the Constitution of the United States, and Title 42 U.S.C. Sections 1983, 1985(3) and 1986, against State employees in their individual capacity by mandating that a State employee's exclusive remedy is against the State itself?

4. Can the State of Illinois constitutionally require that claims of sexual discrimination brought under the Fourteenth Amendment to the Constitution of the United States, and Title 42 U.S.C. Sections 1983, 1985(3) and 1986 against State employees, be brought only in the court of Claims, and not in the Circuit Courts of general jurisdiction, and thereby preclude the employee from obtaining a trial by jury, punitive damages, and full compensation as permitted and allowed under Federal Law?

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On Petition For Writ Of Certiorari To The Appellate Court Of Illinois Fourth District

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Court of the State of Illinois, for the Fourth District, filed March 31, 1992.

OPINIONS BELOW

The opinion of the Appellate Court of the State of Illinois, for the Fourth Appellate District, is reported at

226 Ill.App.3d 962, 590 N.E.2d 511, 168 Ill.Dec.874 (4th Dist. 1992). A copy of the opinion of the Appellate Court is appendixed hereto.

STATEMENT OF JURISDICTION

Jurisdiction in this case is premised upon the provisions of Title 28 U.S.C. Section 1257, which provides for review by certiorari of the decisions of the Courts of the various states including the Appellate Court for the Fourth District of the State of Illinois. A written opinion was issued by the Appellate Court on March 31, 1992. Petitioner sought leave to appeal the Appellate Court's decision to the Supreme Court of the State of Illinois in a timely fashion. On October 7, 1992, the Illinois Supreme Court denied the Petition for Leave to Appeal. A copy of the Order denying the Petition for Leave to Appeal is included in the appendix filed herewith.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the following statutory and constitutional provisions are set forth in the Appendix filed herewith.

1. U.S. Const. Amend. XIV, Section 1.
2. 42 U.S.C. Section 1983.
3. 42 U.S.C. Section 1985(3).
4. 42 U.S.C. Section 1986.

5. Illinois Revised Statutes, Chapter 68, Section 2-101(A) & (B).

6. Illinois Revised Statutes, Chapter 68, Section 8-111(c).

7. Illinois Revised Statutes, Chapter 37, Section 439.8.

STATEMENT OF THE CASE

Prior to August 20, 1987, the Petitioner, Vivian Faulkner-King, was an employee of The Board of Trustees of the University of Illinois, and was employed by it at its Urbana-Champaign Campus in the School of Art and Design.

The individual Respondents were professors and administrators at the University of Illinois who were responsible for evaluating the Petitioner's credentials and making a recommendation as to whether the Petitioner should be retained, promoted, and granted tenure.

On September 16, 1988, the Petitioner filed suit against the individual Respondents and the Board of Trustees of the University of Illinois in the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois. A Second Amended Complaint was filed March 12, 1990. The Respondents filed a Motion to Dismiss the Second Amended Complaint, and argued, inter alia, that the Circuit Court lacked subject matter jurisdiction over each of the causes of action set forth in Petitioner's Second Amended Complaint, as the Legislature had enacted legislation precluding and prohibiting the Circuit Courts from exercising subject matter jurisdiction over claims

involving gender based discrimination except on review of decisions of the Illinois Human Rights Commission. The Petitioner argued, inter alia, in response to Respondents' Motion to Dismiss that the Illinois Legislature had not preempted, prohibited, or precluded the Circuit Courts from exercising jurisdiction over gender based discrimination claims founded upon the Constitution of the United States and provisions of Federal Law, and that the Illinois Legislature could not constitutionally do so as the Illinois Courts could not constitutionally be precluded from exercising subject matter jurisdiction over Federal Claims.

The Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, the Honorable J.G. Townsend presiding, found that it lacked subject matter jurisdiction over the causes of action set forth in Petitioner's Second Amended Complaint, including those causes of action brought under Title 42 U.S.C Sections 1983, 1985(3), 1986, and the Fourteenth Amendment to the Constitution of the United States.

On Petitioner's motion, the Circuit Court entered an Order certifying five questions for review by the Appellate Court for the Fourth District of the State of Illinois, and on September 20, 1991, the Appellate Court allowed the Petitioner's Application for Leave to Appeal as to each of those certified questions. The questions of law which were certified by the Circuit Court, and upon which the Appellate Court granted leave to appeal, included:

> Whether the Circuit Court has subject matter jurisdiction over claims brought under Title 42 U.S.C., Section 1983, 1985(3) and 1986, where the

> Plaintiff alleges that the actions taken against her were as a result of her being a female and/or for arbitrary and capricious reasons.

In an Opinion filed March 31, 1992, the Appellate Court rejected the Petitioner's constitutional challenge to the Circuit Court's ruling, and in doing so, rejected this Court's decision in *Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d 332, 110 S.Ct. 2430 (1990), and the Seventh Circuit decision in *Donnelly v. Yellow Freight System, Inc.*, 874 F.2d 402, 405-406 (7th Cir. 1989), Aff'd 494 U.S. 820, 101 L.Ed.2d 834, 110 S.Ct. 1556 (1990):

> The United States Congress cannot require Circuit Courts to hear certain disputes. Congress can utilize State Courts to enforce federal rights, but it must do so subject to all conditions which the State Court imposes on other litigations. (*Brown v. Gerdes*, 321 U.S. 178, 190, 88 L.Ed. 659, 666-67, 64 S.Ct. 487, 493 (1944)) Although Circuit Courts are courts of general jurisdiction, the Legislature, by authority of the State Constitution, has restricted that jurisdiction when the claim involves a controversy covered by the Act. Courts have consistently ruled the Act is the exclusive source of a remedy for an employment-discrimination claim. Circuit Courts cannot be compelled to accept such cases under the guise of federal authority. (Opinion of the Appellate Court at 15-16; appendixed hereto at 15(a)-16(a).

The Petitioner filed a Petition for Leave to Appeal with the Supreme Court of the State of Illinois, and argued, inter alia, that the decisions of the Circuit Court

and of the Appellate Court unconstitutionally discriminated against claims brought under the Federal Constitution and statutes (U.S. Const. Amend. XIV; 42 U.S.C. Sections 1983, 1985(3) and 1986). The Illinois Supreme Court denied the Petition for Leave to Appeal by Order entered October 7, 1992.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT AND ARGUMENT IN SUPPORT THEREOF

Article VI, Sections 1 and 9 of the Constitution of the State of Illinois, 1970, vest the judicial power of the State of Illinois in a Supreme Court, an Appellate Court and Circuit Courts. The Circuit Courts are granted "original jurisdiction of all judicial matters" (Ill.Const. 1970, Art. 6, Sec. 9).

Section 8-111(c) of the Illinois Human Rights Act (Ill.Rev.Stat. Ch.68, Section 8-111(c)), provides as follows:

> Except as otherwise provided by law, no Court of this State shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this act.

Section 1-102(c) of the Illinois Human Rights Act states that the Act is intended to "secure and guarantee the rights *established by* Sections 17, 18 and 19 of Article I of the Illinois Constitution of 1970". By its own terms therefore, the Illinois Human Rights Act is intended and designed to implement those rights which were established and created by Sections 17, 18 and 19 of Article I of the Illinois Constitution.

The Illinois Human Rights Act does not reach all employees. Section 2-101(b) provides that claims of gender based discrimination are covered under the terms of the Act in those instances where the employer employs fifteen (15) or more employees during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. Thus, the Appellate Court in *Ritzheimer v. Insurance Counselors, Inc.*, 173 Ill.App.3d 953, 527 N.E.2d 1281 (1988); and *Pavilon v. Kaferly*, 204 Ill.App.3d 235, 561 N.E.2d 1245 (1st Dist. 1990), held that the Illinois Human Rights Act did not preempt or preclude the Plaintiff from enforcing her rights to be free from gender based discrimination by original actions in the Circuit Courts.

The decisional law of this Court, and of courts of the State of Illinois, have long made it clear that the Circuit Courts of the State of Illinois, have original, concurrent jurisdiction over claims brought under the Civil Rights Act of 1871 (*Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d 332, 110 S.Ct. 2430 (1990); *Martinez v. California*, 444 U.S. 277, 100 S.Ct. 553, 62 L.Ed.2d 481 (1980); *Donnelly v. Yellow Freight System, Inc.*, 874 F.2d 402 (7th Cir. 1989), Aff'd 494 U.S. 870, 108 L.Ed.2d 834, 110 S.Ct. 1566 (1990); *Alberty v. Daniel*, 25 Ill.App. 3d 291, 323 N.E.2d 110 (1st Dist. 1974); *Seibring v. Parcell's Inc.*, 159 Ill.App. 3d 676, 512 N.E.2d 394 (4th Dist. 1987).

In this Court's unanimous opinion in *Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d 332, 110 S.Ct. 2430 (1990), this Court expressed concern that the District Court of Appeals holding evidenced an intent to evade Federal Law and Discriminate against Federal Causes of Action. (At 366). This Court explained in great detail that Federal

Law is enforceable in the State Courts not because Congress has determined that Federal Courts would otherwise be burdened, or that State Courts might provide a more convenient forum, but because the Constitution and Laws of the United States are as much laws in the various states as are the laws passed by the various State Legislatures. (At 367).

This Court found that the existence of jurisdiction in State Courts, creates an implication of a duty to exercise it, and that a State Court may not deny a Federal Right when the parties in controversy are properly before it in the absence of a valid excuse. (At 369-370). Furthermore, an excuse which is inconsistent with, or which violates Federal Law is not a valid excuse. (At 371). Thus, the courts of the several states must remain open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source. (See *Miles v. Illinois Central R.Comp.*, 315 U.S. 698, 703-704, 86 L.Ed. 1129, 62 S.Ct. 827, 146 A.L.R. 1104).

The decisional and statutory law of the State of Illinois, allows its citizens to bring gender based discrimination claims in the Circuit Courts as original actions in those instances where the Human Rights Act is not applicable (*Ritzheimer v. Insurance Counselors, Inc.*, 173 Ill.App.3d 953, 527 N.E.2d 1281 (5th Dist. 1988); *Pavilon v. Kaferly*, 204 Ill.App.3d 235, 561 N.E.2d 1245 (1st Dist. 1990)). Thus, the Circuit Courts, as Courts of general jurisdiction, entertain claims under State Law which are synonymous with the claims the Petitioner has brought in this case under Federal Constitutional and Statutory Law. The decision of the Appellate Court in this case, unequivocally and directly discriminates against the Petitioner's

federal claims, and in doing so, the Appellate Court's decision is in direct conflict with this Court's prior decisions (See *Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d 332, 110 S.Ct. 2430 (1990); *Mondou v. New York, N.H. and H.R. Comp.*, 223 U.S. 1, 58, 56 L.Ed. 327, 32 S.Ct. 169 (1912); *McKnett v. St. Louis and San Francisco R. Comp.*, 292 U.S. 230, 233-234, 78 L.Ed. 1227, 54 S.Ct. 690 (1934); *Testa v. Katt*, 330 U.S. 386, 91 L.Ed. 967, 67 S.Ct. 810, 172 A.L.R. 225 (1947)).

Similarly, in *Martinez v. California*, 444 U.S. 277, 62 L.Ed.2d 481, 100 S.Ct. 553 (1980), this Court unanimously concluded that a California Statute which purported to immunize public entities and public employees from any liability for parole release decisions was preempted by Section 1983 even though the cause of action was being asserted in the State Courts. As noted by this Court in *Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d 332, 110 S.Ct. 2430 (1990) (at 377), this Court has previously held in *Felder v. Casey*, 487 U.S. 131, 101 L.Ed.2d 123, 108 S.Ct. 2302 (1988), that a notice of claim statute which would effectively shorten a limitations period and impose an exhaustion requirement on claims against public agencies and employees is preempted insofar as they are deemed to apply to Section 1983 actions brought in State Courts.

The Illinois Human Rights Act contains a limitations period of 180 days (Ill.Rev.Stat. Ch. 68, Section 7A-102(A), does not apply to *all* employees, does not allow for a trial by a jury, and contains limitations on damages in actions which would otherwise be brought under Title 42 U.S.C. Sections 1983, 1985 and 1986, and the Fourteenth Amendment to the Constitution of the United States.

The evasion of responsibility for enforcing, or providing a forum for the enforcement of Petitioner's Federal Claims in this case, is no different than had the State of Wisconsin simply amended its notice of claim statute to provide that no State Court would have jurisdiction over an action in which the Plaintiff failed to give the requisite notice. That type of evasive tactic was explicitly rejected by the unanimous decision of this Court in *Howlett v. Rose* (at 383).

The only authority relied upon by the Appellate Court in this case for its rejection of Petitioner's Federal Constitutional and Statutory Claim, is the decision in *Brown v. Gerdes*, 321 U.S. 178, 190, 88 L.Ed. 659, 666-67, 64 S.Ct. 487, 493 (1944). That decision is cited by the Appellate Court for the proposition that the United States Congress cannot require Circuit Courts to hear certain disputes, and that Congress can utilize State Courts to enforce Federal rights subject to all conditions which the State Court imposes on other litigants. The decision in *Brown v. Gerdes* involved a question of whether the New York State Courts, or the Federal Bankruptcy Court, had the power to fix attorney's fees for attorneys who represented the Bankruptcy Estate in litigation in the State Courts. The New York Court of Appeals held that the jurisdiction to fix such fees rested exclusively in the Bankruptcy Court. The United States Supreme Court agreed. It reached that result by analyzing the purposes and necessities of Federal Bankruptcy Law. The Appellate decision in this case does not find support for its assertion in the Opinion of the Court. The language quoted by the Appellate Court is found instead only in the concurring Opinion of Justice Frankfurter.

Under the administrative scheme adopted by the Illinois Legislature in enacting the Illinois Human Rights Act, and given the concomitant filing of discrimination claims with both the Illinois Department of Human Rights and the Equal Employment Opportunity Commission, the decision in this case will guarantee that litigants will no longer be able to file discrimination claims in the State Courts of the State of Illinois, and that *all* such claims will be brought in the Federal Courts of this State.

The Supremacy Clause of the Constitution of the United States precludes the State of Illinois from depriving its Circuit Courts of general jurisdiction from exercising subject matter jurisdiction over Federal Constitutional and Statutory gender-based discrimination claims generally, and in a more limited sense, from precluding such claims, since the Illinois Human Rights Act by its own terms does not apply to all employers and employees in this State.

In reaching this same decision the Seventh Circuit in *Donnelly v. Yellow Freight Systems*, 874 F.2d 402, 405-406 (7th Cir. 1989), Aff'd 494 U.S. 820, 101 L.Ed.2d 834, 110 S.Ct. 1556 (1990), rejected the Illinois Supreme Court's decision in *Mein v. Masonite Corp.*, 109 Ill.2d 1, 485 N.E.2d 312 (1985), and stated as follows:

> As an alternative to its attempt to overcome the presumption of concurrent jurisdiction, Yellow Freight contends Illinois Courts do not have jurisdiction to hear Federal Title VII claims as a matter of Illinois State Law. For this unique proposition, Yellow Freight, relies on the Illinois Supreme Court's decision in *Mein v. Masonite Corp.*, 109 Ill.2d 1, 485 N.E.2d 312 (1985) . . .

> We must reject this argument. Even if the *Mein* court did, in fact, intend to exclude Title VII claims from the Illinois Courts, neither the Illinois Courts, nor the Legislature have the power to close State Court doors to Federal causes of action. When presented with a Federal claim over which concurrent jurisdiction exists, State Courts are under a "duty to exercise (jurisdiction)" over the Federal claim [citations omitted] . . . once Congress has vested jurisdiction over a Federal claim in the State Courts, the State Courts, including the Courts of Illinois, are under a constitutional obligation to exercise jurisdiction. (at 409).

Thus, the Appellate decision in this case is not only in direct conflict with the prior decisions of this Court, it is also in direct conflict with the Seventh Circuit decision in *Donnelly v. Yellow Freight Systems, Inc.*, 874 F.2d 402, 405-406 (7th Cir. 1989), Aff'd 494 U.S. 820, 101 L.Ed.2d 834, 110 S.Ct. 1556 (1990), which was affirmed by this Court. Thus, the Appellate decision in this case relies upon a decision of a State Court of last resort (the Illinois Supreme Court) in a way which conflicts with the decision of the United States Court of Appeals for the Seventh Circuit, and the prior decisions of this Court, including Justice Holmes' pronouncement in *Kenney v. Supreme Lodge*, 252 U.S. 411, 415 (1920), wherein he stated " . . . it is plain that a State cannot escape its constitutional obligations [under the full faith and credit clause] by the simple device of denying jurisdiction in such cases to courts otherwise competent".

As evidenced by the foregoing, the Appellate decision in this case is premised upon a decision of the

Illinois Supreme Court which conflicts with the decision of the United States Court of Appeals for the Seventh Circuit in *Donnelly v. Yellow Freight Systems, Inc.*, 874 F.2d 402, 405-406 (7th Cir. 1989), Aff'd 494 U.S. 820, 101 L.Ed.2d 834, 110 S.Ct. 1556 (1990) and decides a question of subject matter jurisdiction over claims brought under Federal Constitutional and Statutory Law which conflicts with the applicable decisions of this Court. This decision does not necessarily reach the question of whether a State Court is obligated under all circumstances to hear cases brought under Title 42 U.S.C. Sections 1983, 1985 and 1986. It does, however, necessarily require a resolution of the problem created by a State Court which holds that the State Legislature can enact legislation allowing only certain types of litigants (some private employees) access to the State Courts of general jurisdiction for resolution of gender based discrimination claims, and in doing so, preclude the bringing of claims under Federal Constitutional and Statutory Law in the State Courts.

CONCLUSION

For the reasons set forth herein, the decision of the Appellate Court for the Fourth District of the State of Illinois is in direct conflict with the prior decisions of this Court and unconstitutionally allows the Illinois Legislature to preclude citizens of the State of Illinois from pursuing rights and remedies granted under provisions of the Constitution of the United States, Amendment XIV, Title 42 U.S.C. Sections 1983, 1985(3) and 1986. In doing so, the Appellate Court has unconstitutionally deprived the citizens of the State of Illinois of rights and remedies

afforded under Federal Constitutional and Statutory Law, made those rights subservient to rights granted under the decisional and statutory law of the State of Illinois as interpreted by the Appellate Court for the Fourth District, and relegated gender-based discrimination claims to an administrative law judge, and the administrative process provided under the provisions of the Illinois Human Rights Act.

The decision of the Appellate Court for the Fourth District, is without precedent, and is directly contrary to the historically accepted doctrine that an aggrieved party may pursue her rights under Federal Statutory and Constitutional law, including the provisions of Title 42 U.S.C. Section 1983 in either the Federal Courts or the Court of general jurisdiction in the various states.

Wherefore, the Petitioner prays that this Court grant her request for Writ of Certiorari to review the judgment and opinion of the Appellate Court of the State of Illinois, for the Fourth District.

Respectfully submitted,

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NO. 4-91-0660

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

VIVIAN FAULKNER-KING, Plaintiff-Appellant, v. EUGENE C. WICKS, DONALD PILCHER, JAMES KAUFMAN, JACK MCKENZIE, EDWIN L. GOLDWASSER, THEODORE ZERNICH, ALVIN D. MOORE, JERROLD ZIFF, and THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF ILLINOIS, Defendants-Appellees.	)	Appeal from Circuit Court County of Champaign No. 88L981 Honorable John G. Townsend, Judge Presiding.

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NO. 4-91-0660

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

VIVIAN FAULKNER-KING, Plaintiff-Appellant, v. EUGENE C. WICKS, DONALD PILCHER, JAMES KAUFMAN, JACK MCKENZIE, EDWIN L. GOLDWASSER, THEODORE ZERNICH, ALVIN D. MOORE, JERROLD ZIFF, and THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF ILLINOIS, Defendants-Appellees.	)	Appeal from Circuit Court County of Champaign No. 88L981 (Filed Mar. 31, 1992) Honorable John G. Townsend, Judge Presiding.

JUSTICE KNECHT delivered the opinion of the court:

This case is before us pursuant to Supreme Court Rule 308. (134 Ill. 2d R. 308.) The Champaign County circuit court certified five questions for our review related to its jurisdiction to hear plaintiff Vivian Faulkner's claims. We find under each circumstance presented in the questions, the circuit court correctly found it lacked subject-matter jurisdiction to consider plaintiff's claims.

I. ALLEGATIONS AND CIRCUIT COURT'S RULING

Plaintiff was employed at the University of Illinois (University) in the School of Art and Design. As of August 20, 1987, her employment at the University was

not extended. On September 16, 1988, she filed suit in Champaign County circuit court against the board of trustees at the University and against individual defendants Eugene C. Wicks, Donald Pilcher, James Kaufman, Jack McKenzie, Edwin L. Goldwasser, Theodore Zernich, Alvin D. Moore, and Jerrold Ziff. The individual defendants were professors and administrators at the University.

Plaintiff previously filed a complaint with the Illinois Department of Human Rights. The complaint was dismissed because it was filed beyond the statute of limitations. We recently upheld that ruling. (*Faulkner-King v. Illinois Department of Human Rights* (Feb. 6, 1992, 4th Dist. Gen. No. 4-91-0301), Ill. App. 3d ___, ___ N.E.2d ___.) According to defendants, plaintiff also filed an action under Title VII (42 U.S.C §2000e (1988)), which was dismissed by the Federal District Court because it was filed beyond the statute of limitations. (*Faulkner-King v. Board of Trustees* (1991), 757 F. Supp. 951.) This ruling is currently on appeal before the Seventh Circuit Court of Appeals (case No. 91-1578). Finally she has filed a claim in the Illinois Court of Claims (docketed case No. 91-CC-1417), which has been stayed until the other cases are resolved.

In this case, plaintiff alleges she was denied a promotion and tenure as a result of the individual defendants' evaluations and recommendations. She seeks damages for the individual defendants' past actions. Defendants acted in their capacities as either committee members, deans, directors or assistant vice-chancellors. She also seeks injunctive relief against the University's board of trustees

in the form of reinstatement to her position at the University.

Plaintiff filed a second-amended complaint March 12, 1990. Her theories of recovery were based on the claim that she had been discriminated against because of her gender, and/or that the evaluation and recommendation process for retention, promotion, and tenure was conducted in an arbitrary and capricious manner. The second-amended complaint alleged claims under the Constitution of Illinois (Ill. Const. 1970, art. I, §§2, 18), the Constitution of the United States (U.S. Const. amend. XIV), Federal law (42 U.S.C. §§1983, 1985, 1986 (1988)), and common law claims including tortious interference with contract, prospective economic advantage, common law due process, and fraudulent misrepresentation. Defendants filed a motion to dismiss plaintiff's second-amended complaint, arguing among other reasons, that the court lacked jurisdiction to hear her case because of the basis of her claims.

In its opinion filed July 2, 1991, the circuit court dismissed plaintiff's second-amended complaint. The court concluded it lacked subject-matter jurisdiction over the causes of action set forth by plaintiff's complaint because the court's jurisdiction over gender-based discrimination claims is restricted to reviewing decisions of the Human Rights Commission pursuant to section 8-111(C) of the Illinois Human Rights Act (Act) (Ill. Rev. Stat. 1989, ch. 68, par. 8-111(C)). The court found gender-based discrimination was central to each of plaintiff's 14 counts. It concluded that to the extent plaintiff's claims were not premised on gender discriminated, the Court of

Claims was the appropriate forum. It also noted the allegations of the second-amended complaint did not properly allege a claim against any of the individual defendants and stated plaintiff could replead allegations if she wished.

II. CERTIFIED QUESTIONS

On plaintiff's motion, the court entered an order pursuant to Rule 308. It certified the following questions of law for our review:

> "a. Whether the Circuit Court has jurisdiction over a claim for retaliatory discharge founded upon the public policy of the State of Illinois as expressed in Article I, Sections 2, 17 and 18 of the Constitution of the State of Illinois, 1970 where the Plaintiff claims to have been retaliatorily discharged as a result of sexual discrimination and arbitrary or capricious conduct in the tenure evaluation process, the decision denying her promotion and tenure, and in the decision as to whether to discharge her from her employment at the University of Illinois.
>
> b. Whether the Circuit Court has subject matter jurisdiction over a cause of action brought directly under Article I, Sections, 2, 17 and 18 of the Constitution of the State of Illinois, 1970 where the Plaintiff claims to have been retaliatorily discharged as a result of sexual discrimination and arbitrary or capricious conduct in the tenure evaluation process, the decision denying her promotion and tenure, and in the decision as to whether to discharge her from her employment at the University of Illinois.

c. Whether the Circuit Court has subject matter jurisdiction over claims founded upon a theory of Due Process (common law), tortious interference with contract, tortious interference with prospective economic advantage and fraudulent misrepresentation where the Plaintiff claims that the conduct of the Defendants was motivated as a result of the Plaintiff being a female and/or for arbitrary and capricious reasons.

d. Whether the Circuit Court has subject matter jurisdiction over claims brought under Title 42 U.S.C.S. Sections 1983, 1985 and 1986 where the Plaintiff alleges that the actions taken against her were as a result of her being a female and/or for arbitrary and capricious reasons.

e. Whether the Circuit Court has subject matter jurisdiction over claims alleging a civil conspiracy to violate Plaintiff's common law and constitutional rights based upon her status as a female and/or for arbitrary and capricious reasons."

These questions raise two issues. The first question is whether section 8-111(C) of the Act precludes circuit courts from exercising jurisdiction over claims brought under the Constitution of the State of Illinois (Ill. Const. 1970, art. I, §§2, 17, 18), the Constitution of the United States (U.S. Const., amend. XIV), Federal law (42 U.S.C. §§1983, 1985, 1986 (1988)), and common law where the underlying theory for the complained of actions is gender-based discrimination and/or arbitrary and capricious conduct.

The second issue raised is whether plaintiff's claims founded on other than gender discrimination in the evaluation of her as a professor, for retention, promotion, and tenure must be brought in the Court of Claims.

III. SUBJECT MATTER JURISDICTION OVER ALLEGED EMPLOYMENT DISCRIMINATION

Plaintiff first argues the circuit court erred by concluding it lacked jurisdiction to hear discrimination claims based on the Illinois Constitution, common law, Federal constitutional and statutory law. She raises the following arguments: (1) article I, section 2 of the Illinois Constitution permits her to seek original review by the circuit court of her claims; (2) article I, section 17 of the Illinois Constitution was enacted to protect against private, not public, discrimination; (3) article I, section 18 of the Illinois Constitution authorizes her to seek remedies in the circuit court; (4) the language of the Act does not preempt the circuit court's jurisdiction because her claims are not protected under the Act; and (5) circuit courts have original jurisdiction of Federal statutory and constitutional claims and cannot refuse to consider cases which raise these issues. We reject plaintiff's arguments.

The language of the Act and article I, sections 2, 17, and 18 of the Illinois Constitution is pertinent to resolving whether the circuit court had jurisdiction over plaintiff's claims.

The Act states it is intended to "secure and guarantee the rights established by Sections 17, 18 and 19 of Article I of the Illinois Constitution of 1970." (Ill Rev. Stat. 1989, ch. 68, par. 1-102(C).) Section 8-111(C) of the Act further

provides, "[e]xcept as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." Ill. Rev. Stat. 1989, ch. 68, par. 8-111(C).

Article I, section 2 of the Illinois Constitution states "[n]o person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." Ill. Const. 1970, art. I, §2.

Article I, section 17 of the Illinois Constitution provides:

> "All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer * * * .
>
> * * * [T]he General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation." Ill. Const. 1970, art. I, §17.

Article I, section 18 of the Illinois Constitution states: "The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts." Ill Const. 1970, art. I, §18.

A. Article I, Section 2

Article I, section 2 of the Illinois Constitution does not authorize plaintiff to seek original review of her gender-discrimination claims in the circuit court. Plaintiff previously appealed a decision by the Illinois Human Rights Commission, arguing that the Department of Human Rights lacked jurisdiction to hear her complaint

against the University of Illinois School of Art and Design. (See *Faulkner-King* (Feb. 6, 1991, 4th Dist. Gen. No. 4-91-0301), ___ Ill. App. 3d ___, ___ N.E.2d ___.) Her complaint was based on the same outcome she complains of in this case, the termination of her position with the school in August 1987, and the school's failure to grant her tenure or promote her. We concluded the Act is an exclusive remedy for civil rights violations when the action is premised on article I, section 2 of the Illinois Constitution. We relied on the Illinois Supreme Court ruling in *Mein v. Masonite Corp.*, (1985), 109 Ill. 2d 1, 7, 485 N.E.2d 312, 315, which established that the Act was the exclusive remedy for employment discrimination claims. Faulkner-King (Feb. 6, 1992, 4th Dist. Gen. No. 4-91-0301, slip op. at 16), ___ Ill. App. 3d at ___, ___ N.E.2d at ___.

B. Article I, Section 17

Plaintiff contends article I, section 17 of the Illinois Constitution was intended to reach discrimination only by private persons. We disagree. She argues cases restricting the remedy to that provided by the Act have involved a private employer which allegedly violated rights protected by section 17 thereof. See *Thakkar v. Wilson Enterprises, Inc.* (1983), 120 Ill. App. 3d 878, 878-79, 458 N.E.2d 985, 986; *Dilley v. Americana Healthcare Corp.* (1984), 129 Ill. App. 3d 537, 537, 472 N.E.2d 596, 597.

Courts have consistently rejected efforts to view the Act as other than the exclusive remedy for employment discrimination claims. In *Dilley* (129 Ill. App. 3d at 546, 472 N.E.2d at 603), we rejected an argument that article I, section 17 of the Illinois Constitution granted concurrent

jurisdiction as between the circuit courts and the forum provided under the Act. Each district of the appellate court has found the Act to be the exclusive remedy for employment discrimination. *Thakkar,* 120 Ill. App. 3d at 881, 458 N.E.2d at 987 (first district); *Yount v. Hesston Corp.* (1984), 124 Ill. App. 3d 943, 949, 464 N.E.2d 1214, 1218 (second district); *Armstrong v. Freeman United Coal Mining Co.* (1983), 112 Ill. App. 3d 1020, 1022-23, 446 N.E.2d 296, 298 (third district); *Dilley,* 129 Ill. App. 3d at 546, 472 N.E.2d at 603 (fourth district); *Cahoon v. Alton Packaging Corp.* (1986), 148 Ill. App. 3d 480, 482, 499 N.E.2d 522, 523 (fifth district).

More importantly, the Illinois Supreme Court has spoken definitively on the issue concluding the Act was intended to be the exclusive remedy for handling claims of employment discrimination:

> "The legislature has specifically provided through section 8-111(D) of the present act [(Ill. Rev. Stat. 1983, ch. 68, par. 8-111(D) (now see Ill. Rev. Stat. 1989, ch. 68, par. 8-111(C))], * * * that courts have no jurisdiction to hear independent actions for civil rights violations. It is clear that the legislature intended the Act, with its comprehensive scheme of remedies and administrative procedures, to be the exclusive source for redress of alleged human rights violations. [Citations.] Debates on Senate Bill 1377, which became the Human Rights Act, confirm that the legislature intended by the Act to avoid direct access to the courts for redress of civil rights violations." *Mein,* 109 Ill. 2d at 7, 485 N.E.2d at 315.

There should be no distinction between private and public employment discrimination. Article I, section 17 of the Illinois Constitution states "[a]ll persons shall have the right to be free from discrimination * * * of *any* employer." (Emphasis added.) (Ill. Const. 1970, art I, §17.) This section also authorizes the General Assembly to establish laws to enforce the rights granted all employees, public and private, to be free of workplace discrimination. Ill. Const., art. I, §17; see also *Dilley*, 129 Ill. App. 3d at 550-51, 472 N.E.2d at 605-06 (Green, P.J., specially concurring).

C. Article I, Section 18

Plaintiff contends article I, section 18 of the Illinois Constitution does not limit a plaintiff's right to seek redress in circuit courts because, unlike the authority granted in section 17, section 18 does not authorize the legislature to establish "reasonable exemptions."

She contends that no court has ruled a State employee who is protected by the Illinois Constitution from employment discrimination is precluded from seeking redress under the Constitution of the State of Illinois. She reasons State employees can seek redress under both Title VII (see 42 U.S.C. §§2000e-2, 20003-5 (1988)) and the Constitution of the United States and the fourteenth amendment, and cites *Trigg v. Fort Wayne Community Schools* (7th Cir. 1985), 766 F.2d 299. Similarly, State employees should be entitled to seek relief under article I, sections 2 and 18 of the Illinois Constitution in the circuit courts and under the Act.

Plaintiff cites no case law supporting her argument. Although not addressing jurisdiction, employment-discrimination cases brought by State employees have been filed under the Act. See *Board of Trustees of University of Illinois v. Human Rights Comm'n* (1985), 138 Ill. App. 3d 71, 73, 485 N.E.2d 33, 35; *Board of Trustees of Southern Illinois University v. Knight* (1987), 163 Ill. App. 3d 289, 290-91, 516 N.E.2d 991, 993.

While the equal protection clause of article I, section 18 of the Illinois Constitution provides a right to be free from discrimination by the State, this protection in the area of employment discrimination is covered by article I, section 17. The Act states it is intended to protect rights established by section 18. (Ill. Rev. Stat. 1989, ch. 68, par. 1-102(C).) Plaintiff's remedy for claims raised under this section are limited to those provided under the Act. Article I, section 18 does not confer on plaintiff a private right of action for alleged gender discrimination.

D. Claims Protected By The Act

Plaintiff finally argues that because the claims she raises are not protected by the Act, she can seek her remedy in the circuit court. She directs us to that portion of the Act which states the Act does not preempt jurisdiction which is otherwise provided by law. Ill. Rev. Stat. 1989, ch. 68, par. 8-111(C).

Plaintiff compares her action to the court's ruling in *Ritzheimer v. Insurance Counselors, Inc.* (1988), 173 Ill. App. 3d 953, 527 N.E.2d 1281, in which the Fifth District

Appellate Court held the circuit court had original jurisdiction over plaintiff's complaint, in which she alleged she was discriminated against by her private employer because she became pregnant. The court ruled the Act did not apply there because the employer had less than 15 employees and, therefore, was not subject to the Act. It further suggested in *dictum* that plaintiff's second count based on intentional tortious conduct should not have been dismissed. The court reasoned this claim was not necessarily related to, and required different evidence from, an employment-discrimination claim. *Ritzheimer*, 173 Ill. App. 3d at 963-64, 527 N.E.2d at 1288.

Plaintiff also relies on *Pavilon v. Kaferly* (1990), 204 Ill. App. 2d 235, 561 N.E.2d 1245, as support for her argument that her claims are not protected by the Act. In *Pavilon*, the court ruled the circuit court was not preempted by the Act from considering a claim of intentional infliction of emotional distress. *Pavilon*, 204 Ill. App. 3d at 243, 561 N.E.2d at 1250.

Plaintiff contends that where the provisions of the Act apply and the rights to be enforced are created by article I, section 17, a plaintiff must pursue his or her remedies as provided under the Act. Where, however, the Act's provisions do not apply, and the cause the plaintiff seeks to bring is not based on article I, section 17 of the Illinois Constitution, he or she can seek relief in the circuit court. She claims she can seek review in the circuit court because her claims are based on statutory or constitutional bases not provided for by the Act. The bases for the rulings in *Ritzheimer* and *Pavilon* support our finding plaintiff's claims are protected by the Act.

In both cases, the claim which the court viewed as outside the purview of the Act was for intentional infliction of emotional distress. Each court reasoned this claim required evidence far beyond that required in a discrimination claim. *Ritzheimer,* 173 Ill. App. 3d at 963-64, 527 N.E.2d at 1288-89; *Pavilon,* 204 Ill. App. 3d at 244-45, 561 N.E.2d at 1250-51.

Plaintiff's action raises claims similar to those raised *Anderson v. Pistner* (1986), 148 Ill. App. 3d 616, 499 N.E.2d 566. The *Anderson* court dismissed claims of tortious interference with contractual relations and prospective business advantage on jurisdictional grounds, because these claims were rooted in an age-discrimination claim. (*Anderson,* 148 Ill. App. 3d at 619-20, 499 N.E.2d at 569.) Plaintiff's claims are rooted in a gender-discrimination claim. The circuit court noted each of plaintiff's 14 counts were based on a claim of gender-based discrimination. Plaintiff's additional allegations do not require that she be permitted to seek remedies outside those provided by the Act. Her allegations are primarily based on a claim of gender discrimination which the Act protects against.

E. Federal Constitutional and Statutory Claims

Plaintiff argues the circuit court erred in ruling it lacked subject-matter jurisdiction over claims brought under the fourteenth amendment to the Constitution of the United States and under title 42 of the United States Code, sections 1983, 1985, and 1986 (42 U.S.C. §§1983, 1985, 1986 (1988)). She contends circuit courts have concurrent jurisdiction over a claim premised on Federal civil rights statutes and cites numerous cases in support

of her contention. See, *e.g.*, *Howlett v. Rose* (1990), 496 U.S. ___, 110 L. Ed. 2d 332, 110 S. Ct. 2430; *Seibring v. Parcell's Inc.* (1987), 159 Ill. App. 3d 676, 512 N.E.2d 394; *Donnelly v. Yellow Freight System, Inc.* (7th Cir. 1989), 874 F.2d 402, 405-06, *aff'd* (1990), 494 U.S. 820, 108 L. Ed. 2d 834, 110 S. Ct. 1566.

Plaintiff directs us to *Donnelly*, a Title VII case (see 42 U.S.C. §2000e-2 (1988)) in which the Seventh Circuit ruled a State court was obligated to hear a case which raised a Federal claim as to which concurrent jurisdiction existed. (*Donnelly*, 874 F.2d at 409.) Plaintiff also directs us to the United States Supreme Court's ruling in *Howlett* that a State court's refusal to exercise jurisdiction over a claim under title 42, section 1983 of the United States Code (42 U.S.C. §1983 (1988)) violated the supremacy clause. A State court is obligated to address such a claim. (*Howlett*, 496 U.S. at ___, 110 L. Ed. 2d at 350-56, 110 S. Ct. at 2440-45.) According to plaintiff, these rulings illustrate the court's error in concluding it lacked jurisdiction to hear claims which arose under Federal constitutional and statutory law.

The United States Congress cannot require circuit courts to hear certain disputes. Congress can utilize State courts to enforce Federal rights, but it must do so subject to all conditions which the State court imposes on other litigants. (*Brown v. Gerdes* (1944), 321 U.S. 178, 190, 88 L. Ed. 659, 666-67, 64 S. Ct. 487, 493.) Although circuit courts are courts of general jurisdiction, the legislature, by authority of the State Constitution, has restricted that jurisdiction when the claim involves a controversy covered by the Act. Courts have consistently ruled the Act is the exclusive source of a remedy for an employment-

discrimination claim. Circuit courts cannot be compelled to accept such cases under the guise of Federal authority.

Plaintiff's argument is similar to one rejected by the Fifth District Appellate Court in *Cahoon, i.e.*, the plaintiff had an independent enforceable Federal right under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621 *et seq.* (1982)). The court ruled it had no jurisdiction because the claim had to be brought under the Act. *Cahoon,* 148 Ill. App. 3d at 483-84, 499 N.E.2d at 524.

Plaintiff also contends her second-amended complaint raised Federal constitutional and statutory law claims against individual defendants who are not employers. For this reason too, the Act should not have preempted the circuit court's jurisdiction to hear these claims. The circuit court noted in its opinion that claims against the individual defendants were not sufficiently pleaded. Defendants' actions which were complained of were in conjunction with their roles in the decision to deny plaintiff tenure at the University. The Act properly preempts the circuit court of original jurisdiction when a claim alleges employment discrimination.

IV. JURISDICTION OVER COMMON LAW CLAIMS

The second issue raised by the certified questions is whether the Court of Claims is the proper forum for plaintiff's claims other than those alleging gender discrimination. We rule it is the only forum in which plaintiff can raise these claims. Section 8 of the Court of Claims Act provides in relevant part:

"The court shall have exclusive jurisdiction to hear and determine the following matters:

(a) All claims against the state founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims for expenses in civil litigation.

* * *

(d) All claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit, and all like claims sounding in tort against * * * the Board of Trustees of the University of Illinois * * * ." Ill. Rev. Stat. 1989, ch. 37, pars. 439.8(a), (d).

Whether an action constitutes a suit against the State depends on the issues involved and the relief sought. (*Ellis v. Board of Governors of State Colleges & Universities* (1984), 102 Ill. 2d 387, 394, 466 N.E.2d 202, 206; *Robb v. Sutton* (1986), 147 Ill. App. 3d 710, 712-13, 498 N.E.2d 267, 270.) The court found plaintiff's claims which were based on other than gender discrimination were for damages for past actions and sought injunctive relief against the University's board of trustees. It further concluded the claims against the individual defendants were based on actions in their capacities within the tenure process at the University. The State law claims, according to the court, were based on laws or regulations of the State of Illinois, arose out of contractual rights and obligations between plaintiff and the board of trustees, or sounded in tort. If cognizable claims independent of those covered by the

Act are presented by plaintiff's action, the court concluded the proper forum for those claims is the Court of Claims.

Plaintiff concedes an action against the State must be brought in the Court of Claims. (*Healy v. Vaupel* (1990), 133 Ill. 2d 295, 308, 549 N.E.2d 1240, 1247.) Bringing the action in this court cannot be evaded by nominally bringing suit against an agent or servant of the State. (*Sass v. Kramer* (1978), 72 Ill. 2d 485, 491, 381 N.E.2d 975, 977.) Plaintiff, however, directs us to cases stating sovereign immunity affords no protection when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority. In these instances, the plaintiff may seek redress in the circuit courts. See, *e.g., Healy,* 133 Ill. 2d at 308, 549 N.E.2d at 1247.

She also directs us to *Hoffman v. Yack* (1978), 57 Ill. App. 3d 744, 748, 373 N.E.2d 486, 490, in which the court found the circuit court could properly rule on whether the defendant acted outside the scope of his employment and engaged in tortious conduct which interfered with plaintiff's relationship with the university at which plaintiff was a tenured instructor. In addition, the First District Appellate Court has ruled a suit alleging defendant abused his discretion or authority is not subject to a sovereign immunity defense. (*Houseknecht v. Zagel* (1983), 112 Ill. App. 3d 284, 290, 445 N.E.2d 402, 406.) Because her claims against the individual defendants allege similar violations, plaintiff contends the circuit court has jurisdiction to hear these claims.

Plaintiff's action is more akin to the scenario present in *Ellis*, wherein the plaintiff complained she was terminated from a tenured position without good cause. Plaintiff in *Ellis* filed suit against the Board of Governors of Colleges of Illinois for damages, injunctive relief, and reinstatement. (*Ellis*, 102 Ill. 2d at 390, 466 N.E.2d at 204.) The court ruled the Court of Claims had exclusive jurisdiction over both claims. It reasoned that although plaintiff sought injunctive relief and money damages, the suit did not have to be severed by litigating the money damages in the Court of Claims and the injunctive relief in the circuit court. It concluded the action must be brought in the Court of Claims because it was based on a present claim which had the potential to impose liability on the State. (*Ellis*, 102 Ill. 2d at 395, 466 N.E.2d at 206-07.) Plaintiff has raised allegations against the State by alleging wrongdoing by the board of trustees.

This district has addressed whether a claim alleging wrongdoing by a defendant in his individual capacity actually raises liability of the State. In *Robb*, the defendant, an assistant dean of Southern Illinois University, was sued in his individual capacity on negligence and fraud theories. This court found because defendant was acting in his official capacity while communicating with plaintiff, and because damages were sought, the claim was one against the State which must be brought in the Court of Claims. *Robb*, 147 Ill. App. 3d at 713, 498 N.E.2d at 270-71.

Similarly, plaintiff's claim is for damages for past actions. She also seeks injunctive relief against the board

of the University in the form of reinstatement. The individual defendants are alleged to have acted in their individual capacities as either committee members, deans, directors, or assistant vice-chancellors. Because the relief plaintiff seeks could expose the State to liability, she must bring her action in the Court of Claims.

Defendants argue further that because the board of trustees is their employer, and the individual defendants merely made recommendations to the employer regarding plaintiff's future employment, their role is protected by the courts. Plaintiff argues the individual defendants are not immune from prosecution because she alleged they acted outside their authorized capacities in discriminating against her.

We need not, however, address the parties' arguments. A court of review is not limited to the questions certified for review, but should also consider the propriety of the court order. (*Schoonover v. American Family Insurance Co.* (1991), 214 Ill. App. 3d 33, 40-41, 572 N.E.2d 1258, 1262.) Whether the individual defendants are immune from liability is not relevant to the circuit court's order. The court found plaintiff failed to properly allege claims against the individual defendants and told her she could amend her complaint if she wished to do so. Plaintiff did not amend her complaint. If plaintiff raises allegations against the defendants individually, it is generally for the Court of Claims to determine whether the defendants' actions were governmental and therefore whether the defendants' actions were governmental and therefore make them immune from civil prosecution. *Oppe v. State of Missouri* (1988), 171 Ill. App. 3d 491, 494, 525 N.E.2d 1189, 1191.

We find the circuit court lacked subject-matter jurisdiction to hear plaintiff's claims under each circumstance certified as a question. The Act provides the exclusive remedy for employment discrimination claims. The circuit court lacked subject-matter jurisdiction to consider such of plaintiff's claims as were premised on employment discrimination. In addition, the Court of Claims is the proper forum for plaintiff's additional claims because these claims expose the State to potential liability.

Affirmed.

STEIGMANN and McCULLOUGH, JJ., concur.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 82706
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October 7, 1992

Mr. Robert G. Kirchner
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No. 73639 – Vivian Faulkner-King, petitioner, v. Eugene C. Wicks et al., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 29, 1992.

STATUTES CONSTRUED

Illinois Revised Statutes Chapter 68, Section 8-111(c)

> Limitation. Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act.

Illinois Revised Statutes Chapter 37, Section 439.8

> The court shall have exclusive jurisdiction to hear and determine the following matters:
>
> * * *
>
> (d) All claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit, and all like claims sounding in tort against the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System, the Board of Governors of State Colleges and Universities, or the Board of Trustees of the Illinois Mathematics and Science Academy.

Illinois Revised Statute, Chapter 68, Section 2-101(A) & (B)

§ 2-101. Definitions. The following definitions are applicable strictly in the context of this Article.

(A) Employee.

(1) "Employee" includes:

(a) Any individual performing services for remuneration within this State for an employer;

(b) An apprentice;

(c) An applicant for any apprenticeship.

(2) "Employee" does not include:

(a) Domestic servants in private homes;

(b) Individuals employed by persons who are not "employers" as defined by this Act;

(c) Elected public officials or the members of their immediate personal staffs;

(d) Principal administrative officers of the State or of any political subdivision, municipal corporation or other governmental unit or agency;

(e) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee, or work activity client.

(B) Employer.

(1) "Employer" includes:

(a) Any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation;

(b) *Any person employing one or more* employees when a complainant alleges civil rights violation due to unlawful discrimination based upon his or her physical or mental handicap unrelated to ability or sexual harassment;

(c) The State and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees;

(d) Any party to a public contract without regard to the number of employees;

(e) A joint apprenticeship or training committee without regard to the number of employees.

(2) "Employer" does not include any religious corporation, association, educational institution, society, or non-profit nursing institution conducted by and for those who rely upon treatment by prayer through spiritual means in accordance with the tenets of a recognized church or religious denomination with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, society or non-profit nursing institution of its activities.

U.S. Constitution Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

*enforce any law which shall abridge the privi*leges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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42 USCS, Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States of other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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42 USCS, Section 1985(3)

Depriving person of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the

laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

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42 USCS, Section 1986

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (42 USCS, § 1985) are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.
